

United States District Court

For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 DARRELL K. WHITTINGTON, No. C-04-1539 MMC
12 Plaintiff,
13 v.
14 OWENS-ILLINOIS, (Docket No. 46)
15 Defendant.

**ORDER DENYING PLAINTIFF'S MOTION
FOR RELIEF FROM JUDGMENT**

18 Before the Court is the motion filed January 30, 2007 by plaintiff Darrell K.
19 Whittington, seeking relief, pursuant to Rule 60(b)(1) of the Federal Rules of Civil
20 Procedure, from the Court's March 29, 2005 order and judgment dismissing the instant
21 action for failure to prosecute, as well as from the Court's February 7, 2006 order denying
22 his letter brief to reopen the action.

23 To the extent plaintiff challenges the March 29, 2005 order and judgment, his motion
24 is untimely. Any motion brought pursuant to Rule 60(b)(1) must be filed "not more than one
25 year after the judgment, order, or proceeding was entered or taken." See Fed. R. Civ. P.
26 60(b).

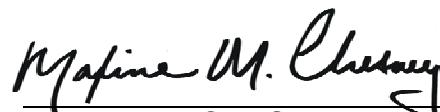
27 To the extent plaintiff challenges the February 7, 2006 order, plaintiff has not
28 demonstrated any basis for setting aside such order.

1 Accordingly, plaintiff's motion for relief from judgment is hereby DENIED.
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This order terminates Docket No. 46.

3 **IT IS SO ORDERED.**

4 Dated: February 1, 2007
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MAXINE M. CHESNEY
United States District Judge